

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8165 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SARVODAYA EDUCATION TRUST

Versus

STATE OF GUJARAT

Appearance:

MS SEJAL K MANDAVIA for Petitioner
MS HARSHA DEVANI, ASTT. GOVERNMENT PLEADER
for Respondents Nos. 1 and 2.

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 10/02/97

ORAL JUDGEMENT

Rule. Ms. Harsha Devani, learned Asstt. Govt. Pleader waives service of notice of Rule on behalf of the respondents.

At the request of learned advocates, the petition is finally heard today.

By means of filing this petition under Art. 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside order dt. October 9, 1996 passed by the District Education Officer Junagadh, Dist. Junagadh by which 25% grant receivable by the petitioner for the year 1995-97 is ordered to be reduced as well as notice dt. October 14, 1996 calling upon the petitioner to show cause as to why penal action should not be taken against the petitioner for irregularities mentioned therein.

The petitioner is a trust registered under the provisions of Bombay Public Trusts Act, 1950. The petitioner was desirous of imparting education. Therefore, the petitioner applied to the Gujarat Secondary Education Board to have name of its trust entered in the register of Secondary Schools maintained by the Board. The application submitted by the petitioner was rejected. Therefore, Special Civil Application No. 6267 of 1984 was filed. By judgment and order dt. October 17, 1995, High Court directed Government to accept the application submitted by the petitioner. Accordingly, the name of the petitioner's school is entered in the register of Secondary Schools maintained by the Board and the petitioner is imparting education to the students.

On August 1, 1995, inspection of the school was carried out and it was found that the presence of the students was below the average. Under the circumstances, the respondent no.2 has passed an order dt. October 9, 1996 reducing grant by 25% which is receivable by the petitioner for the year 1995-96. The said order is produced by the petitioner at Annexure A to the petition. The respondent no.2 has also issued notice dt. October 14, 1996 calling upon the Principal of the school to show cause as to why penal action should not be taken against the petitioner for irregularities mentioned therein. The notice issued to the petitioner is produced at Annexure B to the petition.

Learned counsel for the petitioner does not press challenge to the show cause notice dt. October 14, 1996. The challenge therefore to the said notice is rejected as not pressed.

So far as reduction of grant is concerned, it is an admitted fact that the school was inspected only on October 1, 1996. The ground for carrying out special inspection was to find out bogus classes being run by

different schools on the basis of nonexistent students. It is true that as per amended provisions of Grant-in-Aid Code, the average attendance should be of 23 students so far as the schools situated in rural area are concerned. However, the petitioner has produced a statement indicating presence of students throughout the year at Annexure 'C' to the petition. It shows that the average presence is more than 23. For the purpose of grant, the respondent no.2 could not have taken into consideration the presence of students found on a particular day and come to the conclusion that presence of students on that day was less than the average. Under the circumstances, the decision to reduce grant by 25% for the year 1995-96 is liable to be set aside.

For the foregoing reasons, the petition partly succeeds. The order dt. October 9, 1996 passed by the respondent no.2 which is produced at Annexure A to the petition is set aside and quashed. The respondent no.2 is directed to release 25% withdrawn grant as early as possible and preferably within two months from the date of receipt of the writ.

The office is directed to send copy of the writ to the respondents immediately. It will also be open to the petitioner to produce the copy of the order before the respondents for necessary compliance. Rule is made absolute to the extent indicated hereinabove, with no order as to costs. Direct service is permitted.
